

KCC 4773 (K-C 17,181)  
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Robert L. Popp, et al. Art Unit 3761  
Serial No. 10/038,805  
Filed December 31, 2001  
Confirmation No. 2929  
For MECHANICAL FASTENING SYSTEM FOR AN ABSORBENT ARTICLE  
Examiner: Michael G. Bogart

November 29, 2004

**LETTER TO THE ASSISTANT COMMISSIONER FOR PATENTS**

SIR:

In response to the final Office action of September 8, 2004, applicants submit the following remarks.

Claim 27 requires, among other things, a multi-directional loop fastening component that is "extensible during use in first and second substantially perpendicular directions". The requirement is not that a substrate on which the loop component is fastened be extensible in perpendicular directions, but that the loop component itself is extensible in perpendicular directions.

Popp et al., U.S. Published Application No. 2002/0173767 discloses first (82, 83) and second (84, 85) mating fastening components that are adhered to the side panels (34, 134). The fastening component may be incorporated as part of the side panel that is stretchable in one direction (¶¶ 99 and 107). Moreover, as noted by the Examiner, Van Gompel, U.S. Patent No. 4,940,464 (incorporated by Popp et al.) discloses one embodiment in which a portion of a side panel can be made of a material that has elasticity in all directions.

However, the provision of a substrate (i.e., the side panel material) that is stretchable in multiple directions is not

tantamount to disclosing a loop component that is extensible in two perpendicular directions as required by the claim. There is no disclosure or suggestion that the loop material (i.e., the fastening components 82, 83, 84, 85) is attached to the side panel or formed as the side panel in such a way as to make it extensible in more than one direction. Indeed, conventional loop material is not inherently extensible. Adhering the loop material to a stretchable substrate will not inherently make the resultant loop component (formed by the combination of the loop material and the substrate) extensible.

To anticipate a claim, a particular reference must clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the invention without picking, choosing and combining various disclosures not directly related to each other by the cited reference. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972). In *Arkley*, the cited reference disclosed the precursors to the claimed compound, but did not disclose the compound itself. However, the court found nothing in the reference that clearly and unequivocally led one of ordinary skill in the art to take the steps needed to form the compound from the precursors. Accordingly, the claim was not anticipated by the cited reference.

As in *Arkley*, there is no explicit disclosure of a loop component that is extensible in two perpendicular directions in *Popp et al.* The rejection is based on picking and choosing among disclosures that relate to the loop material itself (i.e., in which extension in only one direction is explicitly taught) and disclosures that relate to the side panel material (i.e., showing perpendicular extension) that do not pertain to the loop fastening component. In that regard, *Van Gompel* (incorporated in *Popp et al.*) does not employ any kind of refastenable fastener on its side panel. *Van Gompel* teaches nothing about

how to make a loop fastener component extensible in two perpendicular directions. Thus, Popp et al. cannot anticipate claim 27.

Neither Popp et al., Van Gompel nor even Stokes et al., U.S. Pat. No. 5,858,515 shows any recognition of the advantages of loop material that is extensible in first and second substantially perpendicular directions. The advantage recognized by applicants in the present application is that the provision of biaxial stretching allows low shear strength hook and loop fasteners to be used in a training pant (or other garment) that will remain fastened when the child is active and applying forces to the hook and loop fastener. More particularly, if the loop material can stretch in two directions, it is more likely that the loops of the loop component will remain engaged with their corresponding hooks of the hook component when subjected to a shear force. However, because the overall shear strength of the fastener material is low, it is still relatively easy to disconnect the fastener components when desired (e.g., as for changing the training pant).

Accordingly, there is no basis within Popp et al., Van Gompel or Stokes et al. for finding a teaching or suggestion of loop material that is extensible in two perpendicular directions. Applicants respectfully, but strongly take issue with the assertion that the failure of the cited references to specifically exclude stretching in two perpendicular directions constitutes an anticipating disclosure of extension in two perpendicular directions. Applicants demand citation of the reference that actually discloses loop material incorporated into a garment that is extensible in two directions.

Anticipation occurs if the prior art "explicitly or inherently discloses every limitation recited in the claims."

*In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997). There is no explicit disclosure of a loop component that is extensible in two perpendicular directions. Accordingly, the Examiner must be relying on an inherent disclosure of the claimed feature.

However, it has been held that it is improper to find inherent disclosure in a reference where the reference fails to disclose, but does not exclude the claimed element. *Corning Glass Works v. Sumitomo Electric, U.S.A., Inc.*, 868 F.2d 1251, 1262 (Fed. Cir. 1989). In *Corning Glass Works*, it was urged that although the prior art reference did not disclose germanium as a dopant, the mere fact that germanium was not excluded from a listing of possible dopants was inherently anticipating. *Id.* This argument was held to be improper. Accordingly, the Examiner's assertion that Popp et al. and the other references are anticipating because they do not exclude loop material that is extensible in two perpendicular directions is legally improper and should be withdrawn.

Claims 2-8 depend directly or indirectly from claim 27 and are submitted to be patentable over the references of record for the same reasons as claim 27. In addition, claims 5-7 specify the (low) shear strengths of the hook material. Popp et al. and the other references of record lack disclosure or suggestion of the use of such low shear strength material as a garment loop fastener component.

Claim 28 includes the same requirements that distinguish claim 27 from the art of record. Accordingly, claim 28 is patentable for the same reasons as claim 27. Claims 10-13 and 16 depend directly or indirectly from new claim 28 and are submitted to be patentable over the references of record for the same reasons as claim 28. In addition, claims 10-12 specify the (low) shear strengths of the hook material. Popp et al. and the other references of record lack disclosure or suggestion of the

use of such low shear strength material as a garment loop fastener component.

Claim 29 includes the same requirements that distinguish claim 27 from the art of record. Accordingly, claim 29 is patentable for the same reasons as claim 27. Claims 22, 23, 25 and 26 depend directly or indirectly from new claim 29 and are submitted to be patentable over the references of record for the same reasons as claim 29. In addition, claims 22 and 23 specify the (low) shear strengths of the hook material. Popp et al. and the other references of record lack disclosure or suggestion of the use of such low shear strength material as a garment loop fastener component.

#### CONCLUSION

In view of the foregoing, applicants respectfully request favorable consideration and allowance of claims 2-8, 10-18 and 20-29 as now presented.

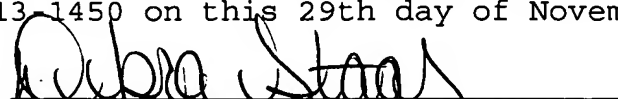
Respectfully submitted,



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#### CERTIFICATE OF MAILING

I certify that this Letter to the Assistant Commissioner for Patent in the application of Popp et al., Serial No. 10/038,805, filed December 31, 2001, is being deposited with the United States Postal Service as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on this 29th day of November, 2004.

  
Debra Staas

KFJ/dss